

**Fortkort Houston** P.C.

AUG 25 2008

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TO:	Mail Stop: APPEAL BRIEF - PATENTS Commissioner for Patents	FROM:	John A. Fortkort Reg. No. 38,454
COMPANY:	U.S. Patent and Trademark Office	DATE:	25 AUGUST 2008
FAX NUMBER:	571-273-8300	TOTAL NO. OF PAGES INCLUDING COVER:	27
PHONE NUMBER:		SENDER'S REFERENCE NUMBER:	LYRN004US0
RE:	APPEAL BRIEF	YOUR REFERENCE NUMBER:	USAN: 10/068,295

USAN: 10/068,295
TITLE: Application-Specific Information-Processing Method, System and Apparatus
Inventor(s): Mitchell, Oscar et al. Art Unit: 2194
Filed: 05 February 2002 Examiner: Truong, Lechi
Our Ref.: LYRN004US0

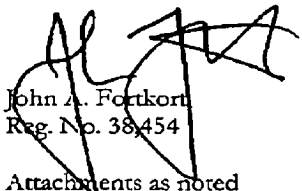
Dear Sir/Madam,

Please find attached:

1. General Transmittal (1 page);
2. Fee Transmittal (1 page);
3. Credit Card Authorization Form (1 page);
4. Appeal Brief (23 pages); and
5. Other: (0 pages).

Thank you for your assistance with this matter. If there are any questions, please contact the undersigned attorney at (512) 343-4539.

Respectfully submitted,
FORTKORT & HOUSTON P.C.



John A. Fortkort
Reg. No. 38,454

Attachments as noted

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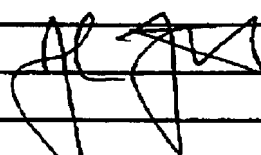
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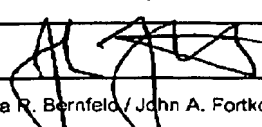
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TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	10/068,295
	Filing Date	05 February 2002
	First Named Inventor	Mitchell, Oscar
	Art Unit	2194
	Examiner Name	Truong, Lechl
Total Number of Pages in This Submission	Attorney Docket Number	LYRN004US0

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below): Credit Card Authorization Form (1 page) Facsimile Cover Sheet (1 page)
Remarks It is believed that no further fee is due with this submission; however, should a fee be deemed due or a credit appropriate, please debit or credit Deposit Account. No. 50-3694 in the name of Forkort & Houston P.C.		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	Forkort & Houston P.C.		
Signature			
Printed name	John A. Forkort		
Date	25 August 2008	Reg. No.	38,454

CERTIFICATE OF TRANSMISSION/MAILING			
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:			
Signature			
Typed or printed name	Reina R. Bernfeld / John A. Forkort	Date	25 August 2008

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450, DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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AUG 25 2008

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Effective on 12/08/2004.
 Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL

For FY 2005

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 255.00
Complete if Known

Application Number	10/068,295
Filing Date	05 February 2002
First Named Inventor	Mitchell, Oscar
Examiner Name	Truong, Lechi
Art Unit	2194
Attorney Docket No.	LYRN004US0

METHOD OF PAYMENT (check all that apply)
☐ Check ☒ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☐ Deposit Account Deposit Account Number: 50-3694 Deposit Account Name: Fortkort & Houston P.C.

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below☐ Charge fee(s) indicated below, except for the filing fee
☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17
☒ Credit any overpayments
WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.
FEE CALCULATION**1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	-
Design	200	100	100	50	130	65	-
Plant	200	100	300	150	160	80	-
Reissue	300	150	500	250	600	300	-
Provisional	200	100	0	0	0	0	-

2. EXCESS CLAIM FEES**Fee Description**

Each claim over 20 (including Reissues)

Fee (\$)	Small Entity Fee (\$)
50	25

Each independent claim over 3 (including Reissues)

200	100
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Multiple dependent claims

360	180
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Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
22	- 20 or HP =	0	0

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
3	- 3 or HP =	0	0

HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
-	- 100 =	/ 50 =	(round up to a whole number) x	-0-

4. OTHER FEE(S)


Non-English Specification, \$130 fee (no small entity discount)

Fee Paid (\$)
-0-

Other (e.g., late filing surcharge): Appeal Brief (small entity)

255.00

SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 38,454	Telephone 512-343-4539
Name (Print/Type)	John A. Fortkort	Date 25 August 2008	

This collection of information is required by 37 CFR 1.135. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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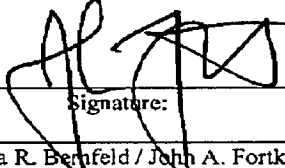
Attorney Docket No.: LYRN004US0

PATENTS
Customer No. 37,141**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Mitchell et al.
Serial No.: 10/068,295
Filing Date: 02/05/2002
Examiner: Lechi Truong
Art Unit: 2194
Title: APPLICATION-SPECIFIC INFORMATION-PROCESSING
METHOD, SYSTEM AND APPARATUS

MAIL STOP: AMENDMENTS

Commissioner for Patents
P.O. Box 1450
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CERTIFICATION OF TRANSMISSION / MAILING UNDER 37 C.F.R. 1.8	
I hereby certify that I have caused the documents indicated herein to be deposited with the United States Postal Service to Addressee under 37 CFR 1.8 on the date indicated below and addressed to Mail Stop Appeals, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or transmitted via facsimile to (571) 273-8300 on the date indicated below.	
Date: <u>August 25, 2008</u>	
Signature:	
Printed Name:	Reina R. Bernfeld / John A. Fortkort

BRIEF ON APPEAL

Board of Patent Appeals and Interferences
Commissioner for Patents
Washington, DC 20231

This is an appeal from the Office Action mailed on January 25, 2008 finally rejecting claims 1-22, and the Advisory Action mailed on April 18, 2008 affirming the rejection of those claims.

This Brief is being filed in triplicate. The fee required under 37 CFR §1.17(c) for the appeal, and any other fees due with this Brief, should be charged to Deposit Account No. 50-3694.

08/26/2008 HMARZ11 00000013 10068295

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Attorney Docket No.: LYRN004US0

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Customer No. 37,141TABLE OF CONTENTS

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REAL PARTY IN INTEREST

The real party in interest is nCipher Corporation Limited acting through its wholly owned subsidiary nCipher, Inc.

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RELATED APPEALS AND INTERFERENCES

There are at present no appeals or interferences on any applications related to the present application.

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STATUS OF CLAIMS

Claims 1-22 are currently pending and have been finally rejected.

Attorney Docket No.: LYRN004US0

PATENTS
Customer No. 37,141**STATUS OF AMENDMENTS**

All amendments have been entered. The Advisory Action dated August 25, 2008 states that, for the purposes of Appeal, the proposed amendments submitted by Applicants "will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended."

Attorney Docket No.: LYRN004US0

PATENTS
Customer No. 37,141**SUMMARY OF THE INVENTION**

The presently claimed invention relates generally to information-processing systems and methods, and more particularly to the use of such systems and methods in a network to process information for use by one or more specific applications. For example, the information-processing system or method may encode and decode data to and from a network protocol.

In a preferred embodiment, the presently claimed invention relates to information-processing systems and methods for the application-specific processing of messages. In accordance with the systems and methods, when a message is received, the message is analyzed to determine whether it is in a selected application format. If the message is not in the selected format, it is routed to a next location. If the message is in the selected format, it is routed to a selected application processor, is processed by the processor, and is routed to the next location.

In a preferred embodiment, an information-processing system encodes and decodes multiple network protocols. The information-processing system uses data being carried over a network for an application. The information-processing system includes hardware state machines or simple programmable processors as modules. Each such module specializes in a specific task. The modules are interconnected to process data in a generally pipelined fashion. Thereby, module specialization contributes to the information-processing system's capability of processing networking traffic at very high speeds.

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PATENTS
Customer No. 37,141**ISSUES ON APPEAL**

1. If an Applicant takes issue with a grounds of rejection posited by an Examiner and points out reasons why the grounds of rejection are believed to be in error, and if the Examiner finds those reasons to be unpersuasive, must the Examiner point out the errors in Applicant's arguments, or is it sufficient to merely repeat verbatim the previous grounds of rejection?
2. In an obviousness rejection based on a proposed combination of primary and secondary references, may an element which is present in the primary reference (but which is not recited in the claims at issue) be used to rebut a prima facie case of obviousness, if the presence of that element in the primary reference renders the proposed combination of references undesirable?
3. May the Examiner assign an interpretation to an element of a reference which is expressly at odds with the description of that element in the reference?

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GROUPING OF CLAIMS

For the purposes of this appeal, claims 1-22 stand or fall together.

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AUG 25 2008**PATENTS**
Customer No. 37,141**ARGUMENTS OF APPELLANTS**

1. If an Applicant takes issue with a grounds of rejection and points out reasons why the grounds of rejection are believed to be in error, and if the Examiner finds those reasons to be unpersuasive, must the Examiner point out the errors in Applicant's arguments, or is it sufficient to merely repeat verbatim the previous grounds of rejection?

In their response of November 13, 2007, Applicants articulated several reasons (see pp. 8-12) why the Examiner's arguments with respect to his rejection of claims 2-6 and 19-21 under 35 U.S.C. § 103(a) as being unpatentable over U.S. 6,097,955 (Bhat) in view of U.S. 6,560,450 (Rosenberg) were incorrect, and why the subject claims were allowable. These reasons, which were supported by a detailed factual analysis (spanning 5 pages) of the references and citations to the relevant portions thereof, included detailed explanations as to why certain claim limitations were not met by the proposed combination of references, why one skilled in the art would have no incentive to modify Bhat in light of Rosenberg in the manner suggested by the Examiner, why the proposed combination of references would not result in the claimed invention, and why the references did not teach or suggest the desirability of the claimed combination of elements. In the subsequent (and final) office action of January 25, 2008, from which the present appeal is made, the Examiner merely repeated verbatim his previous rejections, without responding to Applicant's arguments, pointing out any error in those arguments, or offering any clarification of his previous arguments.

Such a practice is at odds with the Supreme Court's decision in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1395-97 (2007), and with the examination guidelines specifically adopted by the USPTO to account for the *KSR* decision. In particular, on October 10, 2007, the United States Patent and Trademark Office published the *Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex Inc. (Guidelines)* with the express purpose "to help USPTO examiners make appropriate decisions regarding the obviousness of claimed inventions in light of the Supreme Court's decision in *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, 82 USPQ2d 1385 (2007) (*KSR*)". In relevant portion, the *Guidelines* provide that

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been

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obvious. The Supreme Court in KSR noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting In re Kahn 41 stated that “[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”

Applicants note that the mere reiteration of a previous grounds of rejection, made without commenting on a detailed, factual argument submitted by an applicant (which argument explains in detail why that proposed grounds of rejection is in error) is a mere conclusory statement. In particular, such a statement is tantamount, in essence, to an assertion that the Examiner found Applicants arguments to be unconvincing without, however, providing any explanation in support of that conclusion.

Applicant's contention in this regard is clearly supported by MPEP § 707.07(f). This section of the MPEP specifies that

In order to provide a complete application file history and to enhance the clarity of the prosecution history record, an examiner must provide clear explanations of all actions taken by the examiner during prosecution of an application.

Where the requirements are traversed, or suspension thereof requested, the examiner should make proper reference thereto in his or her action on the amendment.

Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it. [emphasis added]

2. In an obviousness rejection based on a proposed combination of primary and secondary references, may an element which is present in the primary reference (but which is not recited in the claims at issue) be used to rebut a prima facie case of obviousness, if the presence of that element in the primary reference renders the proposed combination of references undesirable?

In the Office Action dated July 13, 2007, the Examiner rejected claim 6 as being unpatentable over U.S. 6,097,955 (Bhat) in view of U.S. 6,560,450 (Rosenberg). In making the rejection, the Examiner relied on Rosenberg for the teaching that the message is encrypted, and for the teaching that the step of processing the message by the selected application processor includes decrypting the message by the selected application processor (see Page 3). In support of this contention, the Examiner pointed to Col. 5, lines 54-57 of Rosenberg, which states that:

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The packets contain a header which includes a destination address and a sequence field. The payload in the packet contains the encoded user data, which can be from any kind of multimedia service and can include, for example, voice, video or data. The terminals at the edges of the satellite network carry out the coding and decoding of this data.

On pages 10-12 of their subsequent response dated November 13, 2007, Applicant took issue with the Examiner's rejection. In particular, Applicants noted that, under the interpretation of Bhat proffered by the Examiner, the application processor is located in the middle of the network and that, given its location in the middle of the network, one skilled in the art would have no motivation to modify the application processor of Bhat as suggested by the Examiner (and as necessary to arrive at the claimed invention) to cause it to perform decryption of the packet payload as required to arrive at the claimed invention.¹

The Examiner failed to address this point in the subsequent office action of January 25, 2008. Accordingly, Applicants repeated their argument verbatim in their response of March 21, 2008.

In the Advisory Action dated April 18, 2008, the Examiner finally acknowledged Applicant's argument, albeit in a cursory manner. Notably, however, the Examiner did not challenge Applicant's factual assertion that the location of the application processor in the

¹ With respect to claim 6, the Examiner relies on Rosenberg et al. for the teaching that the message is encrypted, and that the step of processing the message by the selected application processor includes decrypting the message by the selected application processor. Here, the Examiner points to Col. 5, lines 54-58 of Rosenberg et al., which says:

The packets contain a header which includes a destination address and a sequence field. The payload in the packet contains the encoded user data, which can be from any kind of multimedia service and can include, for example, voice, video or data. The terminals at the edges of the satellite network carry out the coding and decoding of this data.

However, the Examiner is respectfully reminded that it is insufficient for the purposes of establishing a prima facie case of obviousness to merely find all of the features of a claimed invention in two or more prior art references. Rather, the Examiner must demonstrate that one skilled in the art would have incentive to make the proposed combination of teachings, and that the proposed combination would result in the invention as claimed.

In the present case, Applicants respectfully note that the "application processor" in the system of Bhat, even under the Examiner's proposed interpretation of the term, is not located at the edge of the network. Rather, it is located in the middle of the network and, in particular, is disposed between the interconnection ring 308 and the switching network 310. Rosenberg et al. does not teach or suggest modifying the location of the application processor, nor could the location of the application processor be changed without causing the system of Bhat to no longer work for its intended purpose.

The location of the application processor in the system of Bhat is significant because the section of Rosenberg et al. cited by the Examiner describes decoding the "encoded user data", which is said to reside in the packet payload. However, given its location in the middle of the network, one skilled in the art would have no motivation to modify the application processor of Bhat to cause it to perform decryption of the packet payload.

First of all, such decryption is not necessary to route the packet, since the packet destination information is contained in the packet header, not the payload. Secondly, decrypting the packet payload at this point in the network would compromise the security of the network because the message is not close to its destination and, hence, is subject to interception (in particular, the message must still traverse the switching network 310 and must then be transmitted to the appropriate cell to reach its destination). Thirdly, Rosenberg et al. itself teaches away from decryption in the middle of the network; hence, in the section cited by the Examiner, Rosenberg et al. notes that decryption occurs "at the edges of the satellite network". Fourthly, as shown by Col. 2, Lines 48-50 of U.S. 6,578,147 (Shanklin et al.) (cited by the Examiner elsewhere in the present office action), any legitimate process which might require decryption of the packet payload, such as intrusion detection, would occur at an entry point to the network, not in the middle of the network.

Moreover, the proposed combination of references does not teach the necessity or desirability of decoding the message with the application processor. In particular, Rosenberg et al. teaches a packet structure in which the header information, which contains the destination address, is separate from the message payload. See Col. 5, Lines 54-58. Hence, it is not necessary to decode the packet payload in order to determine the packet destination. Indeed, Rosenberg et al. teaches as much by suggesting, in the cited passage, that the terminals at the edge of the satellite network carry out encoding and decoding of the payload.

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middle of the network in Bhat would prevent one skilled in the art from modifying Bhat in light of Rosenberg so as to arrive at the claimed invention. Rather, the Examiner refused to consider this point on the grounds that the location of the application processor was not recited in the claims. Thus, on Page 2 of the Advisory Action, the Examiner stated that:

Applicants respectfully note that the "application processor" in the system of Bhat, even under the Examiner's proposed interpretation of the term, is not located at the edge of the network. Rather, it is located in the middle of the network. ... As to [this point], the "application processor" is located at the edge of the network or located in the middle of the network was not in the claims.

The Examiner committed clear error in making this rejection and in refusing to consider the point made by Applicant, because it is evident from the record that Applicant never stated that the location of the "application processor" was an element of the claimed invention. Rather, Applicant's point was that the location of the "application processor" in Bhat would make the Examiner's proposed modification of Bhat (in light of Rosenberg) undesirable and that, since this proposed modification is necessary to support the Examiner's conclusion of obviousness, the Examiner had failed to establish a *prima facie* case of obviousness with respect to claim 6.

Applicant's point here is in line with MPEP § 2145(X)(D)(2), which states that:

It is improper to combine references where the references teach away from their combination. *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983) (The claimed catalyst which contained both iron and an alkali metal was not suggested by the combination of a reference which taught the interchangeability of antimony and alkali metal with the same beneficial result, combined with a reference expressly excluding antimony from, and adding iron to, a catalyst.).

In the present case, the references effectively teach away from the claimed invention because Bhat teaches a location of the application processor that would prevent one skilled in the art from modifying Bhat in view of Rosenberg in the manner required to arrive at the presently claimed invention. Therefore, the references do not support a *prima facie* case of obviousness.

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3. May the Examiner assign an interpretation to an element of a reference which is expressly at odds with the description of that element in the reference?

One of the points at issue in the present appeal is whether an element in a reference may be given an interpretation which is at odds with the express description of that element in the cited reference.

In the office action dated July 13, 2007, the Examiner appeared to argue, in support of his rejection of claim 1 as being anticipated by U.S. 6,097,955 (Bhat), that the element of an "application format" is met in the system of Bhat by the status of a message as a paging message or a regular call control message, and that the radio cluster servers 220-222 are the "application". The Examiner also appeared to construe the data processors of the radio cluster servers as the "application processor".

On pages 7-8 of its response of November 13, 2007, Applicant took issue with the Examiner's assertion that claim 1 is anticipated by Bhat by pointing out that the Examiner's interpretation of the term "application processor" was at odds with the meaning of that term set forth in the reference itself. Thus, Applicant argued that

However, the Examiner is respectfully reminded that he is not free to adopt an interpretation of a prior art reference which is at odds with the express teachings of the reference itself. In the present case, element 302 in the system of Bhat is explicitly labeled as the "application processor", and this element specifically includes as components thereof the radio cluster servers 322-324 and the communication module 320 (see FIG. 3). Hence, the Examiner is not free to designate another element, such as the radio cluster servers 322-324 or elements hereof, as the "application processor" because to do so would be to disregard the explicit teachings of the reference.

With the foregoing understanding, it is clear that Bhat does not anticipate the presently claimed invention because, in the system described therein, the message is routed to the application processor whether or not it is a paging message (that is, whether or not, under the Examiner's interpretation of Bhat, the message is in the "selected application format"). Hence, the recited element of claim 1 is not met by the system of Bhat.

In the subsequent office action of January 25, 2008, the Examiner disagreed (somewhat obliquely) with Applicant's argument, apparently on the grounds that the radio cluster servers may be designated as the "application processor" because they are components of the "application processor". Thus, the Examiner noted that:

Applicant argued in substance that ... "it is not free to designate another element, such as the radio cluster server 322-324 or elements hereof, as the application processor". ... As to [this point], Bhat teaches the radio cluster servers 322-324 are software modules within the CPU of the application processors 302 (col 6, 13-15).

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In their subsequent response of March 21, 2008, Applicants disagreed with the Examiner. In particular, Applicants noted that it does not follow from the fact that the radio cluster servers may be *components* of the device denoted as the “application processor” in Bhat that the radio cluster servers *are* the “application processor”:

In the present office action, the Examiner responds that Bhat teaches the radio cluster servers 322-324 are software modules within the CPU of the application processors 302 (col. 6, 13-15).

However, Applicants respectfully submit that this comment is not responsive to the Applicants' arguments, since the mere fact that the radio cluster servers are software modules within the CPU of the application processors of Bhat does not refute Applicants' arguments, nor has the Examiner deigned to explain himself any further. If the Examiner means to say that the radio clusters may be considered to be the “application processor” because they are elements of the application processor 302 of Bhat, then Applicants respectfully note that the Examiner's argument is logically flawed. By way of analogy, it does not follow from the fact that the Earth is an element of the universe that the Earth is the universe.

The foregoing distinction is not a matter of mere semantics, because the Examiner's whole anticipation argument depends upon it. In particular, if the radio cluster servers are merely components of the application processor, rather than being the application processor itself, then claim 1 cannot be anticipated by Bhat, because claim 1 requires, in essence, that the “next location” to which the message is routed is distinct from the application processor. Thus, Applicants noted that:

Moreover, Applicants respectfully note that the Examiner's comment refutes his own argument. In particular, both the radio cluster servers 322-324 and the communication module 320 are components of the application processor 302. Consequently, the communication module 320 cannot be the “next location” as that term is used in claim 1, because claim 1 requires that the “next location” is distinct from the application processor. In particular, claim 1 specifically requires that:

if the message is in the selected format:
 routing the message to a selected application processor;
 processing the message by the selected application processor; and
 routing the message to the next location.

Hence, for claim 1 to read on the system of Bhat, the “next location” would have to be the switching network 310. However, in the system of Bhat, the message is routed to the switching network 310 regardless of whether the message is a paging message or a regular call control message. Therefore, the Examiner's proposed interpretation of Bhat does not result in the claimed invention as required to support a rejection under 35 U.S.C. § 102(a).

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Applicant's foregoing argument is not addressed in the Advisory Action dated April 18, 2008, and from which this appeal is taken. In light of the foregoing, however, it will be appreciated that the Examiner has either misinterpreted the term "application processor" which appears in claim 1, or has failed to explain how Bhat teaches every element of the claimed invention. In either case, the Examiner has failed to establish a prima facie case of obviousness with respect to claim 1.

4. Conclusion

With respect to the Examiner's rejection of claims 2-6 and 19-21 under 35 U.S.C. § 103(a) as being unpatentable over U.S. 6,097,955 (Bhat) in view of U.S. 6,560,450 (Rosenberg), the Examiner has failed to respond to Applicant's arguments noting the infirmities of this rejection. Rather, the Examiner has merely repeated the previous grounds of rejection verbatim in the final office action without further explanation. This practice is in contravention of the Supreme Court's decision in *KSR*, as well as the dictates of MPEP § 707.07(f).

With respect to the Examiner's rejection of claim 6 under 35 U.S.C. § 103(a) as being unpatentable over U.S. 6,097,955 (Bhat) in view of U.S. 6,560,450 (Rosenberg), Applicant has argued that one skilled in the art would have no incentive to combine the references in the manner suggested by the Examiner, because the location of the application processor in the middle of the network in Bhat would make the proposed combination undesirable. The Examiner has disregarded this argument on the grounds that the location of the application processor is not specified in the claims. However, the Examiner's actions are in contravention of MPEP § 2145(X)(D)(2), because the location of the application processor in Bhat goes to the issue of obviousness (that is, the location of the application processor effectively teaches away from modifying Bhat in view of Rosenberg in the manner suggested by the Examiner in his conclusion of obviousness). Since the location of the application processor in Bhat refutes the Examiner's conclusion of obviousness, it is not necessary that this feature be recited in claim 6 in order to overcome an argument of obviousness based on Bhat and Rosenberg. Therefore, the Examiner has applied an incorrect legal standard in rejecting claim 6 as being obvious over these references.

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With respect to the Examiner's rejection of claim 1 as being anticipated by U.S. 6,097,955 (Bhat), the Examiner has interpreted the term "application processor" in a manner which is inconsistent with the express definition of the term given in Bhat, in contravention with the long established requirement that a reference must be construed as a whole for what it fairly suggests to one skilled in the art. In particular, the Examiner has assigned the term "application processor" to the radio cluster servers of Bhat, even though Bhat clearly shows the radio cluster servers to be merely components of the application processor, rather than the application processor itself. When the radio cluster servers are properly construed in accordance with the teachings of Bhat as being components of the application processor, then it is clear that Bhat does not anticipate claim 1, since the "next location" to which a message is routed is no longer distinct from the application processor as required by claim 1. The Examiner has compounded this error by making the rejection of claim 1 final without responding to Applicant's argument along these lines.

In light of the above errors, it is thus respectfully requested that the final rejections of the currently pending claims be withdrawn, and that the present application be remanded to the Examiner for further action on the merits in a manner consonant with the rectification of the errors noted herein. Should the Examiner subsequently choose to maintain the anticipation or obviousness rejections noted above, it is further respectfully requested that the Examiner properly account for the issues raised by Applicant herein.

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Applicants submit that the current grounds of rejection are in error and that the pending claims are in condition for allowance. An early indication thereof is respectfully solicited. Please charge any fee deficiency due with this Appeal Brief, or credit any overpayment, to Deposit Account No. 50-3694. Please reference our Docket No. LYRN004US0.

Respectfully submitted,

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APPENDIX A
(Currently Pending Claims)

1. (Previously Presented) An information-processing method including:
 - receiving a message;
 - ascertaining whether the message is in a selected application format;
 - if the message is not in the selected application format:
 - routing the message to a next location; and
 - if the message is in the selected format:
 - routing the message to a selected application processor;
 - processing the message by the selected application processor; and
 - routing the message to the next location.
2. (Previously Presented) The method of Claim 1, wherein receiving the message includes receiving a packet.
3. (Previously Presented) The method of claim 2, wherein receiving the packet includes receiving the packet from a network.
4. (Previously Presented) The method of Claim 3, wherein receiving the packet from a network includes receiving the packet from a packet switched network.
5. (Previously Presented) The method of Claim 4, wherein the network is the Internet.
6. (Previously Presented) The method of Claim 1, wherein

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ascertaining whether the message is in a selected application format includes
ascertaining whether the message is encrypted; and
processing the message by the selected application processor includes decrypting the
message by the selected application processor.

7. (Previously Presented) An information-processing system comprising:

a fabric configured for communication with a network;
a plurality of application services devices;
wherein the plurality of application service devices are configured to receive a
plurality of unprocessed application-specific messages from the fabric;
wherein each unprocessed application-specific message is configured to be processed
by a particular application; wherein the fabric is adapted to route each of the plurality of
unprocessed application-specific messages to an application service device adapted to process
the message with the particular application;
wherein the plurality of application service devices are further configured to process
the unprocessed application-specific messages in parallel, wherein each unprocessed
application-specific message is processed with the particular application for which it is
configured, whereby a plurality of processed application-specific messages is produced; and
wherein the plurality of application service devices are further configured to send the
each processed application-specific message to the fabric.

8. (Previously Presented) The information-processing system of Claim 7, wherein each
message comprises a packet.

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9. (Previously Presented) The information-processing system of Claim 8, wherein each application service device comprises a hardware state machine.

10. (Previously Presented) The information-processing system of Claim 9, wherein the plurality of application service devices are included in a single integrated circuit.

11. (Previously Presented) The information-processing system of Claim 7, wherein each application service device comprises a simple programmable processor.

12. (Previously Presented) The information-processing system of Claim 7, wherein at least one of the plurality of application service devices comprises a plurality of interoperably configured distinct physical devices.

13. (Previously Presented) The information-processing system of Claim 7, wherein at least one of the plurality of application service devices comprises an SSL/TLS processor.

14. (Previously Presented) The information-processing system of Claim 7, wherein the plurality of unprocessed application-specific messages comprises an unprocessed application stream, and wherein the plurality of processed application-specific messages comprises a processed application stream.

15. (Previously Presented) The information-processing system of Claim 14, wherein the application streams comprise an SSL/TLS connection between a web browser and a web server.

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16. (Previously Presented) The information-processing system of Claim 14, wherein the application streams comprise an e-mail transfer.

17. (Previously Presented) The information-processing system of Claim 14, wherein the application streams comprise a virtual private networking communication.

18. (Previously Presented) The information-processing system of Claim 14, wherein the application streams comprise a TCP offload engine communication.

19. (Previously Presented) An information-processing method, including:

receiving a message;

after receiving the message: ascertaining whether the message is susceptible to be processed by a particular application;

if the message is susceptible to be processed by the particular application:

routing the message to an application service device that is adapted to use the particular application to process the message;

after routing the message to the application service device: processing the message by the application service device using the particular application;

after processing the message: routing the message to a next location; and if the message is not an application-specific message: routing the message to the next location.

20. (Previously Presented) The information-processing method of Claim 19, wherein the particular application comprises a decryption application, and wherein a message susceptible to be processed by the particular application comprises an encrypted message.

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21. (Previously Presented) The information-processing method of Claim 20, wherein the message is a packet.

22. (Previously Presented) An information-processing method, including:

a first iteration of the method of Claim 19;

a second iteration of the method of Claim 19;

wherein the receiving a message of the second iteration corresponds to the routing of the message to the next location of the first iteration, whereby the message is processed in a pipeline fashion.